SUPREME COURT OF THE UNITED STATES

IN RE MICHAEL SINDRAM

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 90-6051. Decided January 7, 1991

JUSTICE MARSHALL, with whom JUSTICE BLACKMUN and JUSTICE STEVENS join, dissenting.

To rid itself of the minor inconvenience caused by Michael Sindram, an *in forma pauperis* litigant, the Court closes its doors to future *in forma pauperis* filings by Sindram for extraordinary writs and hints that restrictions on other filings might be forthcoming. Because I continue to believe that departures of this sort from our generous tradition of welcoming claims from indigent litigants is neither wise nor warranted by statute or our rules, see *In re McDonald*, 489 U. S. 180, 185 (1989) (Brennan, J., dissenting, joined by MARSHALL, BLACKMUN, and STEVENS, JJ.), I dissent.

As the Court documents, Sindram's filings have been numerous, and many have been frivolous. In my view, however, the Court's worries about the threats that hyperactive *in forma pauperis* litigants like Sindram pose to our ability to manage our docket are greatly exaggerated and do not support the penalty that the Court imposes upon him. We receive countless frivolous *in forma pauperis* filings each year, and, as a practical matter, we identify and dispense with them with ease. Moreover, indigent litigants hardly corner the market on frivolous filings. We receive a fair share of frivolous filings from paying litigants. Indeed, I suspect that because clever attorneys manage to package these filings so their lack of merit is not immediately apparent, we expend more time wading through frivolous paid filings than through frivolous *in forma pauperis* filings. To single out Sindram in response to a problem that cuts across all classes of litigants strikes me as unfair, discriminatory, and petty.

The Court's crackdown on Sindram's future filings for extraordinary writs is additionally disconcerting when one considers the total absence of any authority for the penalty the Court administers. As Justice Brennan keenly pointed out in *In re McDonald*, see *id.*, at 185–186, the *in forma pauperis* statute permits courts only to dismiss an action that is in fact frivolous. See 28 U. S. C. §1915(d). That statute, however, does not authorize us prospectively to bar an *in forma pauperis* filing on the ground that the litigant's earlier filings in unrelated actions were frivolous. This Court's Rules are equally silent on the matter. Rule 39, which governs *in forma pauperis* proceedings, includes no provision allowing prospective denial of *in forma pauperis* status. While Rule 42.2 permits assessing costs and damages for frivolous filings, it says nothing about saddling an indiscriminate litigant with what amounts to an injunction on future filings.

Some of our *in forma pauperis* filings are made by destitute or emotionally troubled individuals. As we struggle to resolve vexing legal issues of our day, it is tempting to feel put upon by prolific litigants who temporarily divert our attention from these issues. In my view, however, the minimal annoyance these litigants might cause is well worth the cost. Our longstanding tradition of leaving our door open to all classes of litigants is a proud and decent one worth maintaining. See *Talamini* v. *Allstate Insurance Co.*, 470 U. S. 1067, 1070 (1985) (STEVENS, J., concurring).

Moreover, we should not presume in advance that prolific indigent litigants will never bring a meritorious claim. Nor should we lose sight of the important role *in forma pauperis* claims have played in shaping constitutional doctrine. See, *e. g.*, *Gideon* v. *Wainwright*, 372 U. S. 335 (1963). As Justice Brennan warned, "if . . . we continue on the course we chart today, we will end by closing our doors to a litigant with a meritorious claim." *In re McDonald*, *supra*, at 187. By closing our door today to a litigant like Michael Sindram,

we run the unacceptable risk of impeding a future Clarence Earl Gideon. This risk becomes all the more unacceptable when it is generated by an ineffectual gesture that serves no realistic purpose other than conveying an unseemly message of hostility to indigent litigants.

I dissent.